2013 IL App (2d) 120254-U
No. 2-12-0254
Order filed March 7, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CESAR VELASCO, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Kane County. No. 05-CF-602 Honorable Patricia Piper Golden, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's appeal was late: on remand from a prior appeal, he filed a motion directed against the judgment but did not appeal within 30 days of the ruling, instead filing a successive motion and then appealing from the denial of that motion; the trial court's improper admonishments did not provide a basis to treat the appeal as timely.

¶ 2 Defendant, Cesar Velasco, appeals from his sentence of 20 years' imprisonment, imposed upon his conviction of attempted first-degree murder (710 ILCS 5/8-4(a), 9-1(a)(1) (West 2004)). We hold that the appeal was untimely, and we therefore dismiss it.

¶ 3 I. BACKGROUND

¶ 4 A grand jury indicted defendant on a count each of attempted first-degree murder, aggravated domestic battery, and aggravated battery. All three counts related to the hammer bludgeoning of Domingo Casarrubias-Barrera, defendant's housemate, which occurred on March 11, 2005. On February 17, 2006, defendant entered a blind guilty plea to the attempted-murder count, and the State dismissed the other two charges, conceding that they would merge with the count to which defendant pleaded guilty. On August 18, 2006, the court sentenced defendant to 20 years' imprisonment. After the denial of his motion for reconsideration of the sentence, defendant appealed. This court vacated the denial of the motion to reconsider and remanded the matter for the filing of an attorney's certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Velasco*, No. 2-08-0780 (2008) (unpublished order under Supreme Court Rule 23).

¶ 5 The trial court told defense counsel to file a new motion to reconsider along with his certificate. Counsel filed the certificate on November 23, 2010, and adopted the earlier motion to reconsider. The court denied the motion on March 8, 2011. The court then raised a question of whether it should advise defendant that he was entitled to move to withdraw his guilty plea. The State encouraged such an admonition, and the court gave it. The court also told defendant that an appeal would be premature. Defendant asked if the public defender could help him file a motion; the court said he was entitled to counsel and appointed the public defender.

¶ 6 On April 6, 2011, defendant filed a motion to withdraw the plea. On February 7, 2012, counsel told the court that he had spoken with defendant and learned that defendant had no interest in withdrawal, but only in asking the court to reconsider the sentence once more. The colloquy as transcribed left ambiguous whether counsel had withdrawn the motion, but the later comments of all involved imply that they believed it was withdrawn. Counsel said that, when he first understood

what defendant wanted, he had not realized that the court had already denied a motion for reconsideration. Counsel therefore moved the court to allow rehearing of that motion. The State objected to that procedure, and the court denied the motion for rehearing on February 28, 2012. Defendant filed a notice of appeal that day.

¶ 7 Defendant filed a "Motion to Establish Jurisdiction" in this court. Defendant conceded that, in a typical case, Illinois Supreme Court Rule 606(b) (eff. Mar. 1, 2009) would have required defendant to file his notice of appeal no more than 30 days after March 8, 2011, when the court denied the motion to reconsider the sentence. However, he argued that the court had authority to extend the time in which defendant could file a motion to withdraw his plea. He further argued that, under the circumstances, fairness requires that the withdrawal of the motion to withdraw the guilty plea trigger the start of the 30 days in which to appeal. In support of this, he cited *People v. Green*, 332 Ill. App. 3d 481, 484 (2002), which concerns the improper-admonition exception to the requirement that a defendant who has entered a guilty plea timely file one of the motions specified under Illinois Rule 604(d) to obtain the ability to file an appeal.

¶ 8 The State has joined in arguing that this court has jurisdiction. It cites *People v. Miraglia*, 323 Ill. App. 3d 199, 204-05 (2001), and implies that that holding supports this court's jurisdiction. We take the State to suggest that the court's denial on remand of defendant's motion for reduction of his sentence was the equivalent of the sentencing. In other words, it treats the March 8, 2011, denial as a final order that started the *initial* 30-day clock for filing a postjudgment motion *or* a notice of appeal, rather than as an order that started the 30-day clock for filing a notice of appeal after the denial of a proper postjudgment motion. See Ill. S. Ct. R. 606(b) (eff. Mar. 1, 2009).

¶ 9 This court granted defendant's "Motion to Establish Jurisdiction."

¶ 10 II. ANALYSIS

¶ 11 On appeal, the parties address only the merits of defendant's sentence; they do not revisit the question of jurisdiction. Unfortunately, we must revisit the issue. We are not bound by our own nonfinal rulings. See *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 368 Ill. App. 3d 734, 742 (2006) (this court is not bound by another district's ruling that this court has jurisdiction over an appeal, as that ruling was the equivalent of this court's own nonfinal ruling). Moreover, we have an obligation to ensure that jurisdiction is proper and must act *sua sponte* when necessary to fulfill that obligation. *E.g.*, *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 7.

¶ 12 The appeal was too late, and the trial court's advice otherwise to defendant did not change that. Neither *Green* nor *Miraglia* suggests otherwise. We recognize that this result is neither efficient nor satisfying. Jurisdictional law has little room for equitable considerations; when both parties find their interests thwarted by our lack of jurisdiction, we can only suggest that they seek a supervisory order.

¶ 13 Our analysis starts by considering why the admonitions, contrary to what defendant suggests, do not affect our jurisdiction. It then turns to the chronology of the remand to show why, contrary to the State's contentions, defendant's motion to withdraw his plea was a successive postjudgment motion that did not extend the time to appeal.

¶ 14 Defendant's arguments imply that the lack of proper admonitions is an independent basis for appellate jurisdiction. That idea is the result of a misunderstanding. Until 10 years ago, there existed two recognized and competing theories of what happened when a defendant filed an appeal without having filed a motion required by Rule 604(d). The first theory was that a motion was needed to

create appellate jurisdiction. The second was that the required motion was merely a condition precedent for appellate relief. In *In re William M.*, 206 Ill. 2d 595, 601-03 (2003), the supreme court explicitly decided in favor of the second—condition precedent—theory. In support of this, it noted that in cases such as *People v. Foster*, 171 Ill. 2d 469, 473 (1996), it had recognized that, "where a trial court fails to give Rule 605(b) admonitions, the appellate court may entertain an appeal from a sentence despite defendant's noncompliance with the written motion requirement of Rule 604(d)." *William M.*, 206 Ill. 2d at 602. In other words, that a court can, in specific circumstances, entertain an appeal when the defendant has not met Rule 604(d) requirements shows that Rule 604(d) requirements are not jurisdictional. Therefore, compliance (or excused noncompliance) with Rule 604(d) is not a source of jurisdiction.

¶ 15 Appellate court jurisdiction depends only on the timely filing of a notice of appeal. Ill. S. Ct. R. 606(a) (eff. Mar. 20, 2009); *In re J.T.*, 221 Ill. 2d 338, 346 (2006). More specifically, *J.T.* held that an appeal must be timely for a reviewing court to even address whether admonitions were proper. *J.T.*, 221 Ill. 2d at 346. That holding is directly on point.

¶ 16 In *J.T.*, the respondent asserted that he had received inadequate admonitions under Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001). However, his appeal was untimely. Nevertheless, the appellate court remanded for proper admonitions. The supreme court vacated the appellate court's judgment, ruling that "the appellate court had no jurisdiction to consider the issue of whether the cause should be remanded for proper Rule 605 admonitions." *J.T.*, 221 Ill. 2d at 353. Thus, *J.T.* defeats any assertion that the bad-admonition exception applies to permit otherwise untimely appeals. Were the law otherwise, a defendant who got bad admonitions would be entitled to appeal at any time, even years after judgment.

¶ 17 The case that best supports a finding of jurisdiction, *People v. Jones*, 349 Ill. App. 3d 255, 259 (2004), would not have been possible after *J.T.* (*Jones* predates *J.T.* by almost two years.) The *Jones* court held that the appellate court had jurisdiction of a more-than-six-months late appeal because the defendant (probably) could not understand the admonitions. It treated the admonition flaw as creating jurisdiction, precisely as *J.T.* said such a flaw could not.

¶ 18 *Green*, on which defendant relies, is inapposite. That holding is simply a restatement of the familiar principle that, although a proper Rule 604(d) motion is a condition precedent to appeal, the law excuses the failure to meet that condition when the trial court failed to properly admonish the defendant of the need for such a motion. It is true that *Green* puts the issue in jurisdictional terms, something that it would not have done after *J.T.*: "a defendant's failure to comply with Rule 604(d) does not preclude an appellate court from having jurisdiction if the defendant was not properly admonished according to Rule 605(b)." *Green*, 332 Ill. App. 3d at 484. Regardless of the relevance of jurisdiction, the important word in this is "preclude." *Green* does not suggest that the circumstance that a court did not properly admonish a defendant creates jurisdiction.

¶ 19 Having rejected defendant's claim that the court's error in advising him created jurisdiction, we examine the State's claim that defendant had no need to resort to special exceptions to show that his appeal was timely. That argument misunderstands the status of the matter on remand.

¶ 20 In the first appeal here, this court vacated the denial of the motion to reconsider, but did nothing to the sentence. Thus, on remand, the case remained a postjudgment case. One motion from defendant on remand was proper, as the lack of a Rule 604(d) certificate implied that the original one might not have properly addressed concerns of defendant's. Put another way, this court's remand order implicitly required defense counsel to have a chance to replace the postjudgment motion.

Therefore, the "new" motion to reduce the sentence was effectively the original postjudgment motion, not a successive motion. However, once the court decided that motion, a second postjudgment motion did not extend the time to appeal. *Miraglia* addresses precisely that issue.

¶ 21 In *Miraglia*, the defendant filed a proper posttrial motion in which he asserted that the evidence was insufficient. The court denied the motion and sentenced defendant. Defendant then filed within 30 days, not the expected motion for a reduced sentence, but rather a second motion that asserted a lack of sufficient evidence. The court denied that motion on December 13, 1999. Twenty-nine days later, on January 11, 2000, defendant filed a *third* motion attacking the sufficiency of the evidence. *Miraglia*, 323 Ill. App. 3d at 202. The court denied the third motion on January 20, 2000. *Miraglia*, 323 Ill. App. 3d at 204. The *Miraglia* court suggested that the *second* motion was improper, but considered *arguendo* that it was a timely postjudgment motion that thus set the deadline for appeal as 30 days after its denial. It noted that successive postjudgment motions do not extend the time for appeal, despite the practice of giving courts the authority to allow time for amendment of a postjudgment motion. It therefore ruled that the third motion did not extend the time for appeal: "a trial court cannot permit a defendant to file a postjudgment motion directed against the final judgment, rule on it, and then rule on a motion to reconsider the denial of that posttrial motion and thereby extend its jurisdiction and the time for appeal." *Miraglia*, 323 Ill. App. 3d at 205. Thus, here, defendant's motion to withdraw his plea and motion for rehearing did not extend defendant's time to appeal, and the appeal is late.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we must dismiss defendant's appeal for lack of jurisdiction.

¶ 24 Appeal dismissed.